

Remarks

Reconsideration is requested in view of the above amendments and the following remarks. Claims 12, 13, 15, 17, 18 and 21 are amended to correct a typographical error. New claims 22-24 are added. The new claims are supported by the original disclosure, for example page 5, line 8 to page 6, line 3. Claims 12-24 are pending.

Claims 12 and 17 are rejected under 35 USC 103(a) as being unpatentable over US 1943914 to Flock in view of US 5860763 to Asplin.

In addition, claims 13-16 and 18-21 are rejected under 35 USC 103(a) as being unpatentable over Flock in view of Asplin and US 5795108 to Lightle.

Applicant respectfully traverses the rejection.

In order to establish a prima facie obviousness rejection, all of the claimed features must be disclosed in the cited art or must be otherwise accounted for in the rejection. Applicant submits that claims 12 and 17 recite features not disclosed in Flock and Asplin, and therefore a prima facie case of obviousness has not been established.

Claims 12 and 17 each recite "lifting with air pressure, momentarily, said slab to a height above the desired final level". Flock and Asplin do not teach or suggest lifting a slab to a height above the desired final level. As acknowledged in the rejection, at best Flock teaches lifting the slab to a height equal to the desired final level. There is absolutely no mention in Flock or Asplin of lifting the slab to a height above the desired final level.

In addition, Flock does not teach introducing compressed air and sand under the slab in bursts as recited in claim 12. Moreover, claims 12 and 17 recite "repeating said lifting and leveling steps". Flock does not teach repeating lifting and leveling steps as claimed. Flock discloses two different embodiments, one in Figure 1 where filling material under pressure is introduced via a stem 9, and a second embodiment in Figure 4 where filling material is introduced via a piston mechanism (column 3, lines 45+). Although it is not clear from the rejection, it appears that the Examiner is relying upon the embodiment in Figure 4 to teach the bursts recited in claim 12. The only repeating that occurs in Flock is with the embodiment in Figure 4. However, the embodiment in Figure 4 does not utilize compressed air. Further, the embodiment in Figure 1 appears to operate continuously until the desired level is achieved. Therefore, neither embodiment

in Flock momentarily lifts the slab with air pressure, and repeats such lifting. Since the operation of the embodiment in Figure 1 is continuous, it cannot momentarily lift the slab. In addition, it is pure speculation as to whether the embodiment in Figure 4 creates any pressurized air that momentarily lifts the slab.

For at least these reasons, a prima facie case of obviousness has not been established with respect to claims 12 and 17, and the claims are patentable over Flock and Asplin. Claims 13-16 and 18-21 depend upon claims 12 and 17, respectively, and are patentable along with claims 12 and 17 and need not be separately distinguished. Applicant does not concede the rejections to claims 13-16 and 18-21.

New claims 22-24 are also patentable over Flock and Asplin. Neither reference teaches an airtight seal between the nozzle and the slab. There is no indication that an airtight seal exists between the nozzle 13 of Flock and the slab. In addition, the nozzle 13 in Flock penetrates into the ground under the slab. However, claim 22 recites that the nozzle does not penetrate into ground underneath the slab.

Reconsideration in the form of a notice of allowance is requested. If a telephone conference would be helpful in resolving any issues concerning this communication, please contact Applicants' primary attorney-of record, James A. Larson (Reg. No. 40,443), at (612) 455.3805.



Dated: November 26, 2007

Respectfully submitted,

HAMRE, SCHUMANN, MUELLER &
LARSON, P.C.
P.O. Box 2902
Minneapolis, MN 55402-0902
(612) 455-3800

By: 

James A. Larson
Reg. No. 40,443